

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN A. WARD,	§
	§ No. 18, 2006
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 85006215DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: February 23, 2006

Decided: May 15, 2006

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 15th day of May 2006, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, John A. Ward, filed an appeal from the Superior Court's December 12, 2005 order denying his motion for correction of sentence pursuant to Superior Court Criminal Rule 35. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the

ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) In April 1978, Ward was found guilty by a Superior Court jury of Robbery in the First Degree and Assault in the Third Degree. Ward was sentenced as a habitual offender to life imprisonment plus 1 year incarceration at Level V. Ward's convictions and sentences were affirmed by this Court on direct appeal.²

(3) In this appeal, Ward claims that the Superior Court incorrectly treated his motion as a motion to modify his sentence pursuant to Superior Court Criminal Rule 35(b). In his motion in Superior Court, he argued that the evidence was insufficient to convict him, the trial judge improperly amended the indictment, defense counsel provided ineffective assistance, and his life sentence as a habitual offender is unconstitutional.

(4) Even if Ward's motion is considered under Rule 35(a), Ward still is not entitled to relief. This Court previously has held that Rule 35(a) is not a proper vehicle for a defendant to obtain review of alleged errors occurring at trial.³ Because Ward's first three claims would require a review of his entire trial proceedings, as opposed to merely his sentences, no relief is available to him under Rule 35(a) with respect to those claims.

¹ Supr. Ct. R. 25(a).

² *Ward v. State*, 414 A.2d 499 (Del. 1980).

³ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

(5) The argument underlying Ward’s fourth claim is that his sentence as a habitual offender is unconstitutional under the Thirteenth Amendment of the United States Constitution, which prohibits slavery and involuntary servitude “except as a punishment for crime whereof the party shall have been duly convicted” Ward was convicted of two criminal offenses and his convictions were affirmed by this Court. Moreover, Ward is serving a sentence for having committed those crimes, and is not engaged in any form of “slavery” or “involuntary servitude.” There is, thus, no basis in law or fact for this claim.

(6) It is manifest on the face of Ward’s opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice